



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,774	09/15/2003	Anthony F. Mercurio	66307-286-7	7245
25269	7590	12/12/2005	EXAMINER	
DYKEMA GOSSETT PLLC FRANKLIN SQUARE, THIRD FLOOR WEST 1300 I STREET, NW WASHINGTON, DC 20005			METZMAIER, DANIEL S	
			ART UNIT	PAPER NUMBER
			1712	

DATE MAILED: 12/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/661,774

Applicant(s)

MERCURIO, ANTHONY F.

Examiner

Daniel S. Metzmaier

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 Sept. 2003; 9 Feb 2004; & 16 Aug 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 12 and 13 is/are rejected.
- 7) ☒ Claim(s) 9 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/16/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-13 are pending.

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

See the residence address of the declaration.

Specification

2. The use of the trademarks and/or trade names has been noted in this application. Trademarks should be capitalized wherever they appear and should be accompanied by generic terminology. An example is TERGITOL® NP-10 on page 14.

Applicants should further provide generic language for any trade names set forth in the specification. Attention is directed to the examples. The partial list on page 18 is noted.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Art Unit: 1712

4. Claims 12-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 12 and 13 set forth a "post forming composition", which lacks basis in claim 1 and should be a "post foaming composition".

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-8, 10, and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wheeler, WO 99/05229, optionally in view of Sebba, US 4,486,333. Wheeler (abstract; page 3, last paragraph; and page 4, fourth paragraph) discloses surface coatings comprising a suspension of entrapped oils or oil soluble substances as biliquid foams and a polymer film of desired thickness and strength to protect said oil droplets.

Wheeler differs from the claims in the characterization of the compositions as a post foaming composition and the exemplified compositions and/or sufficiency to disclosure.

Wheeler (page 4, third paragraph et seq) teaches the compositions comprising biliquid foams of non-polar substance in a solution, suspension or gel of polymer are coated onto a substrate. Wheeler (page 5, last paragraph) teaches the non-polar substance is releasable from the coating upon the application of shear forces to the

Art Unit: 1712

polymer film, such as the use of perfume in scratch and sniff applications. Said compositions would be expected to foam to a limited extent prior to bubble rupture and release of the perfume agent.

Wheeler (paragraph bridging pages 7 and 8) disclose the biliquid films are easily dispersible in aqueous gel and polymer suspensions and said biliquid foams may comprise non-polar substances including among others: perfumes and organic solvents, such as hexane and chloroform (each have a boiling point in the range of 25 to 72°C).

Wheeler (page 8, first full paragraph) discloses the polymers that may be employed including at least the species carboxymethylcellulose or polyvinyl alcohol. Wheeler (examples) discloses a primary surfactant in making the biliquid foams.

Wheeler (page 9, third paragraph et seq) discloses the compositions may be coated on the interior of a ostomy or colostomy pouch or similar device. Said devices with the coating read on the package limitations of claims 12 and 13.

To the extent Wheeler differs from claims 2 and 3 in the concentration of the primary surfactant or the particular surfactant species, Sebba (abstract) is directed to making biliquid foams and further characterizes said biliquid foams as aphrons (column 1, line 40). Sebba (column 4, lines 24 et seq) discloses only a minimum concentration of the surfactant as at least 0.3 % by weight of the hydrogen bonding liquid, i.e., water. Sebba (column 4, lines 34-36; and claim 3) discloses the use of water-soluble anionic, cationic, or nonionic surfactants. Sebba (column 5, lines 19 et seq) teaches the polyaphrons (biliquid foams) have been produced using petroleum ether (BP ~ 40-60°C) among others.

These references are combinable because they teach making biliquid foams and compositions employing said biliquid foams. It would have been obvious to one of ordinary skilled in the art at the time of applicants' invention to employ non-polar hexane, petroleum ether, or similar substances that would have a boiling point in the range of the petroleum ether for their advantageous solvent properties.

Furthermore, it would have been obvious to one of ordinary skilled in the art at the time of applicants' invention to employ conventions anionic or nonionic surfactants such as TWEEN® (sorbitol esters) sulfate esters as anionic surfactants taught in the Sebba references as obvious function equivalents to the surfactants taught in the Wheeler reference.

Allowable Subject Matter

7. Claims 9 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. The following is a statement of reasons for the indication of allowable subject matter: the claimed compositions set forth in claims 9 and 11 have not been disclosed or fairly suggested in the prior art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (571) 272-1089. The examiner can normally be reached on 9:00 AM to 5:30 PM.

Art Unit: 1712

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Daniel S. Metzmaier
Primary Examiner
Art Unit 1712

DSM